

**-- REVISED --**  
**DRAFT 1/27/12 – SUBJECT TO CHANGE**  
***For Review and Adoption by DSC at the February 9-10, 2012 Meeting***  
**DELTA STEWARDSHIP COUNCIL**  
**Thursday, January 26, 2012**  
**West Sacramento City Hall Galleria**  
**1110 West Capitol Avenue**  
**West Sacramento, CA 95691**

**MEETING SUMMARY**

Note: Copies of all Council meeting agendas and links for all documents can be found at the DSC website, [www.deltacouncil.ca.gov](http://www.deltacouncil.ca.gov). Specific links are provided in the meeting summary for those items submitted at the meeting.

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***Thursday, January 26, 2012, 9:00 a.m. – 4:30 p.m.***

**1. Welcome and Introductions**

The meeting was called to order at 9:00 a.m., January 26, 2012, by Chair Phillip Isenberg.

**2. Roll Call – Establish a Quorum (Water Code §85210.5)**

Roll call was taken and a quorum established. The following members were present for the meeting: Hank Nordhoff, Patrick Johnston, Gloria Gray, Felicia Marcus, Randy Fiorini, Phillip Isenberg, and Don Nottoli.

**3. Chair's Report**

Chair Isenberg announced Alex Hildebrand's death. The Chair stated Mr. Hildebrand was a highly respected man who will be missed. The Council observed a moment of silence in Mr. Hildebrand's memory.

Chair Isenberg stated as of this meeting, the Council has held approximately 69 meetings of various types since its creation in 2010.

**4. Executive Officer's Report**

**4a. Legislative and Legal Update**

The Legislative and Legal Update were taken out of order and at the end of the Executive Officer's report.

**4b. Budget Update**

Joe Grindstaff began his report with a briefing on the 2012-2013 Governor's Proposed Budget and the Zero Base Budget Project. The proposed FY 2012-2013 Council budget, Delta Protection Commission, and the Sacramento-San Joaquin Delta Conservancy's budgets were outlined in the staff report as well as the annual cross-cut budget that showed expenditures of all federal and state agencies that manage CALFED-related programs.

#### **4c. Contracts Update**

The Quarterly List of Contracts and Grants was included in the meeting packet. The listing included updated information on the current fiscal year budget and a quarterly update of contracts.

#### **4d. EIR Field Hearings**

The recently completed EIR Field Hearings that were held in San Diego, Pasadena, Ceres, Clarksburg, and Willows were briefly discussed. The summary of the field hearings was passed out to members and is posted on the Council's website at

[http://www.deltacouncil.ca.gov/sites/default/files/documents/files/Item\\_4d\\_Report\\_of\\_EIR\\_Field\\_Hearings\\_0.pdf](http://www.deltacouncil.ca.gov/sites/default/files/documents/files/Item_4d_Report_of_EIR_Field_Hearings_0.pdf) Council member Don Nottoli noted he attended the meeting in Clarksburg and the record will be amended to reflect his attendance.

#### **4e. Suisun Marsh Management Plan FEIR Comments**

Mr. Grindstaff brought to the Council's attention and briefly discussed the two letters sent by Dan Ray, Chief Deputy Executive Officer, to the Department of Fish and Game and US Bureau of Reclamation on January 5, 2012, on behalf of the Council, that provided comments on the Suisun Marsh Habitat Management Preservation and Restoration Plan Final EIS/R. Mr. Grindstaff stated the Mr. Ray continues to meet with the agencies' staff and the discussion continues on this issue.

#### **4f. Letter of Support for the Department of Fish and Game Proposed Striped Bass Regulation (Action Item)**

At the November 18, 2011 meeting the Council was updated by Carl Wilcox about the Department of Fish and Game's proposed changes to the striped bass sporting fish regulations. Mr. Wilcox stated the deadline for public comments had been extended beyond the original December 12, 2011 deadline. Chair Isenberg made a motion that was seconded by Council member Fiorini directing staff to proceed with drafting a letter, on the Council's behalf, regarding the proposed regulations. The draft letter was prepared and presented to the Council for their review and approval. Chair Isenberg requested the Council review the letter and return to the agenda item prior to the conclusion of the meeting for discussion and approval.

#### **4a. Legislative and Legal Update**

Curt Miller presented the Legislative Update. Mr. Miller stated that most legislative activity will be focused on the budget there is a \$9.2 billion budget deficit for the current budget. Mr. Miller updated the Council on two bills that failed passage – AB 157 (Jeffries) and AB 550 (Huber) as well as the Water Bond - AB 1283 (Barryhill) that still remains on the ballot.

Chris Stevens presented the Legal update. Mr. Stevens discussed a case that involved an alleged "taking" under the U.S. Constitution of a property interest in a water right held by a municipal water district. Mr. Stevens stated the case had been on-going for several years in the Federal Court of Claims in Washington, D.C. Casitas Municipal Water District sued the United States in the Federal Claim Court for a Fifth Amendment taking of its property interest in water based on a biological opinion issued by the National Marine Fisheries Services under the Endangered Species Act. The case involved protecting endangered steelhead, a diversion dam and a fish ladder that dedicated water that would have gone into Casitas Municipal Water District's storage. This case involved public trust issues and water rights under California law. A decision was issued on December 5, 2011 denying on "ripeness grounds" Casitas' takings claims. Mr. Stevens said an appeal is anticipated.

At the conclusion of the Executive Officer's Report, Mr. Grindstaff introduced Cindy Messer, who has been appointed as Council's Acting Deputy Executive Officer for Planning. Ms. Messer will take over the lead role in the Delta Plan as Terry Macaulay is retiring.

Chair Isenberg called for public comment on the Executive Officer's report – there was none.

#### **5. Adoption of the December 15, 2011 Meeting Summary (Action Item)**

Chair Isenberg asked if there were any questions or comments from the Council or the public about the December 15, 2011 Meeting Summary. As there were none, it was moved (Marcus) and seconded (Gray) to approve the meeting summary from the December 15 meeting. A vote was taken (7/0: Nordhoff, Johnston, Gray, Marcus, Fiorini, Isenberg, Nottoli) and the motion to approve the meeting summary was adopted.

#### **6. Lead Scientists' Report**

Sam Harader briefed the Council on three items – the 2011 Fall Midwater Trawl Fish Abundance Indices, the latest issue of the Council-sponsored online journal, *San Francisco Estuary and Watershed Science*, (Volume 9, Issue 3, 2011), and a new journal publication by Brooks et al. (In Press) on the ecological effects of contaminants. Mr. Harader answered questions and provided clarification for the Council members.

#### **7. Appointment of Lead Scientist (Action Item)**

Joe Grindstaff presented agenda item 7, an Action Item requesting the Council review the recommendation from the Delta ISB and appoint Dr. Peter Goodwin as the Lead Scientist for the Delta Science Program. The Sacramento-San Joaquin Delta Reform Act of 2009 requires the Council to appoint a Lead Scientist for the Delta Science Program after consultation with the Delta ISB. Mr. Grindstaff stated that although Dr. Cliff Dahm's term as Lead Scientist ended August 19, 2011, he continued part-time as the Lead Scientist through the recruitment period. The Delta ISB completed its recruitment and interview process and recommended the Council appoint Dr. Peter Goodwin as Lead Scientist for the Delta Science Program. The staff report summarized the process that led to Dr. Goodwin's nomination and Dr. Goodwin's qualifications. Dr. Goodwin's Curriculum Vitae was attached for the Council members' review.

Chair Isenberg asked if there were any questions or comments on Dr. Goodwin's nomination. As there were none, it was moved (Nottoli) and seconded (Gray) to appoint Dr. Peter Goodwin as the Lead Scientist for the Delta Science Program. A vote was taken (7/0: Nordhoff, Johnston, Gray, Marcus, Fiorini, Isenberg, Nottoli) and the motion to appoint Dr. Goodwin as the Lead Scientist for the Delta Science Program was adopted.

#### **8. East Bay Municipal Utilities District Levee Proposal (Action Item)**

Cindy Messer introduced Eric Nichol, who briefed the Council on the East Bay Municipal Utilities District Levee Proposal. The Action Item requested the Council approve four proposed projects for full funding based upon specific findings, conditioned upon DWR making final CEQA determinations and funding decisions consistent with those findings, and including specific indemnification language in funding agreements. The staff report explained that the purpose of the Council's approval was to facilitate funding by DWR for local projects consistent with the criteria established by the Legislature in Water Code § 83002(a) (1). The total State funds allocated by the proposed Council action amounts to \$13,522,750. Local cost share funds will be in addition to that amount. At the May 2010 DSC meeting, the Council approved the

expenditure of funds for design, planning, and environmental review for the 10 projects, with the direction that project proponents could return to seek construction funding when CEQA compliance could be demonstrated. Nine of the 10 projects have completed environmental assessments, scopes of work development, and CEQA notice of exemption preparation and filing. On July 29, 2011 the DSC approved funding for five of the 10 projects, as those five were sufficiently developed and had received the appropriate agency approvals. Four of the remaining five are now ready for approval, and it is anticipated that the one remaining project will be ready sometime in 2012, and would be submitted when final biological assessments are completed.

Eileen White, EBMUD, presented a status update on the projects that were approved and were under way. Ms. White stated the stability of the levees had greatly increased because of the improvements. Her presentation was posted on the Council's website at [http://www.deltacouncil.ca.gov/sites/default/files/documents/files/Item\\_8\\_Presentation\\_EBMUD%20Levee\\_Projects\\_Status\\_Update.pdf](http://www.deltacouncil.ca.gov/sites/default/files/documents/files/Item_8_Presentation_EBMUD%20Levee_Projects_Status_Update.pdf)

Following Ms. White's presentation, Dante Nomellini, on behalf of the reclamation district, addressed the Council to provide clarification on the issue of vegetation on the levees and their structural stability. Mr. Nomellini also discussed stockpiling materials in the event of a catastrophic levee failure.

Mr. Grindstaff told the Council that he had received a map from DWR that showed the status of the levees (island by island) within the Delta and will post the map on the Council's website. Dave Mraz, DWR, was available to provide clarification regarding the map such as who has the responsibility of conveying information on the levees and updating the map. Mr. Mraz stated the information on the levees would be given to DWR from the various reclamation districts and DWR would have the responsibility of keeping the map updated.

Ms. White and Eric Nichol answered questions and provided clarification for Council members. Following the presentation of Agenda Item 8, Chair Isenberg asked if there were any members of the public wishing to speak. As there were none, it was moved (Gray) and seconded (Nottoli) to approve the four proposed projects for full funding based upon specific findings, conditioned upon DWR making final CEQA determinations and funding decisions consistent with those findings, and including specific indemnification language in funding agreements. A vote was taken (6/0: Nordhoff, Gray, Marcus, Fiorini, Isenberg, Nottoli) and the motion to approve the EBMUD Levee Proposal was adopted.

## **9. Summary of Changes Leading to Fifth Staff Draft Delta Plan**

Keith Coolidge opened Agenda Item 9 by giving background information on the item. Chris Stevens also provided clarification on the process that led to the development of the drafts. Mr. Coolidge introduced John Kirlin and Bob Twiss, who led the discussion with a presentation that has been posted on the Council's website at [http://www.deltacouncil.ca.gov/sites/default/files/documents/files/Item\\_9\\_Presentation\\_Developing\\_Staff\\_Draft\\_Delta\\_Plans\\_Comments\\_And\\_Changes.pdf](http://www.deltacouncil.ca.gov/sites/default/files/documents/files/Item_9_Presentation_Developing_Staff_Draft_Delta_Plans_Comments_And_Changes.pdf). They began the discussion on the development of the first five drafts of the Delta Plan and gave a summary of the public comments received.

Part way through the presentation of Agenda Item 9, the Council recessed for lunch at 12:10 p.m. The meeting was reconvened at 1:10 p.m. with the continuation of the presentation for Agenda Item 9. Kirlin and Twiss answered Council members' questions and provided

clarification. Following the presentation, Chair Isenberg asked if there were any members of the public who wanted to comment on Item 9.

### **Public Comment – Agenda Item 9:**

Burt Wilson, Public Water News Service, requested to comment on Chapter 4 of the Fifth Staff Draft Delta Plan, MWD diversions, and an ACWA meeting he recently attended. Mr. Wilson handed out a graphic to the Council that is posted on the Council's website at [http://www.deltacouncil.ca.gov/sites/default/files/documents/files/Item\\_9\\_Burt\\_Wilson\\_Public\\_Comment.pdf](http://www.deltacouncil.ca.gov/sites/default/files/documents/files/Item_9_Burt_Wilson_Public_Comment.pdf)

Pete Kutras, Delta Counties Coalition, introduced Doug Brown, who will be replacing Mr. Kutras representing the Delta Counties. Mr. Kutras commented on the public involvement and transparency of the process. He had four points he wanted to emphasize: 1) objections to Covered Actions, Attachment 1, Changes in Staff Draft Delta Plans, page 11, bullet 3; 2) the Counties are concerned about Delta levee improvements and risk reduction; 3) thinking globally about coordination and not just state agencies but counties, cities, local agencies, etc, utilizing local collaborative processes; and 4) requested the ESP discussion with the DPC be open and gentle as the development of the ESP was not an easy process. Mr. Kutras felt the ESP was the Commission's best effort to put a plan forward and urged the Council consider inclusion of most of it in the Delta Plan.

### **10. Framework for Review of BDCP**

Joe Grindstaff introduced Agenda Item 10 by providing a brief update on the status of BDCP and its activities. Chair Isenberg drew attention to an opinion letter from the Attorney General that was included in the meeting materials as Attachment 1. Keith Coolidge briefed the Council on the process that the staff will be using when preparing comments on the Administrative draft EIR/S. Mr. Stevens briefed the Council on the Council's appellate and responsible agency role. He also discussed the letter from Deputy Attorney General Tara Mueller, regarding the Council's "Responsible Agency" role regarding BDCP. Mr. Coolidge, Mr. Stevens and Mr. Grindstaff answered questions and provided clarification for the Council on the role the Council has as a responsible agency under CEQA in development of the EIR/S.

### **11. Delta Independent Science Board Report**

Dr. Lauren Hastings presented the ISB report for Dr. Norgaard. Dr. Hastings discussed the ISB meeting that was held on January 12-13, 2012. The meeting materials from the Delta ISB meeting are posted on at <http://www.deltacouncil.ca.gov/science-board/isb-meetings>. Dr. Hastings also discussed the two draft memos included in the meeting materials as Attachment 1 and Attachment 2. Both memos were drafts and were not approved at the Delta ISB meeting. The memos will be finalized at the March 8-9, 2012 Delta ISB meeting. Dr. Hastings answered questions for the Council and provided clarification.

### **4f. Letter of Support for Department of Fish and Game Proposed Striped Bass Regulation (Action Item)**

Agenda Item 4f was taken out of order and the draft letter was discussed. Member Fiorini thought the letter should stress funding for monitoring of the regulation's effect. Mr. Grindstaff and the Council members discussed ideas such as identifying funding and the suggestion to consider a bass stamp to ensure that funding. Dr. Hastings and Dave Zezulak, DFG, also discussed adaptive management and best available science.

It was moved (Fiorini) and seconded (Johnston) to send the comment letter on DFG's Proposed Changed Regulations for Striped Bass with the recommended changes that were discussed regarding the bass stamp and other financing tools. A vote was taken (6/0: Nordhoff, Johnston, Marcus, Fiorini, Isenberg, Nottoli) and the motion was adopted.

## **12. Public Comment**

Chair Isenberg asked if there were any members of the public who wished to make general public comment – there were none.

**The meeting was adjourned at 2:40 p.m.**